

**TITLE 77
STATE LANDS**

**CHAPTER 5
TIMBER RESOURCES**

Part 3 -- Streamside Management Zones

- 77-5-301. Findings and purpose.
- 77-5-302. Definitions.
- 77-5-303. Standards for forest practices in streamside management zones.
- 77-5-304. Inspection -- onsite consultation.
- 77-5-305. Responsibility for compliance -- penalties -- administrative orders.
- 77-5-306. Repealed.
- 77-5-307. Rulemaking.

Part 3

Streamside Management Zones

77-5-301. Findings and purpose. (1) The legislature finds that the streamside management zone:

- (a) acts as an effective sediment filter to maintain water quality;
- (b) provides shade to regulate stream temperature;
- (c) supports diverse and productive aquatic and terrestrial riparian habitats;
- (d) protects the stream channel and banks;
- (e) provides large, woody debris that is eventually recruited into a stream to maintain riffles, pools, and other elements of channel structure; and
- (f) promotes flood plain stability.

(2) The legislature further finds that maintaining the integrity of forest streams is crucial to the quality and quantity of water available to Montanans for domestic, agricultural, industrial, and recreational use.

(3) The legislature further finds that forest streams are highly susceptible to impacts from land development and that in many cases forest practices in streamside zones in Montana are causing excessive and unnecessary damage to the banks, beds, and protective vegetation of forest streams.

(4) The legislature further finds that, through careful management in the streamside zone, owners and operators can achieve timber harvest goals without sacrificing water quality or impairing the beneficial uses of the water.

(5) The purposes of this part are:

- (a) to protect the legitimate public interest in the quality and quantity of forest waters;
- (b) to provide for standards, oversight, rehabilitation, and penalties to ensure that forest practices are conducted in a manner that conserves the integrity of Montana's streamside zones;
- (c) to provide guidelines for the management of wildlife habitat in streamside zones; and

(d) to allow operators necessary flexibility to use practices appropriate to site-specific conditions in the streamside management zone.

History: En. Sec. 1, Ch. 608, L. 1991.

77-5-302. Definitions. As used in this part, the following definitions apply:

- (1) "Alternative practices" means forest practices that are:
 - (a) conducted in the streamside management zone and that are different from practices required by rules adopted under this part;
 - (b) designed for site-specific conditions encountered during a timber sale; and
 - (c) subject to department approval under 77-5-303.
- (2) "Department" means the department of natural resources and conservation provided for in 2-15-3301.
- (3) "Forest practices" means, within a timber sale, the harvesting of trees, road construction or reconstruction associated with harvesting and accessing trees, site preparation for regeneration of a timber stand, reforestation, and management of logging slash. The term does not include activities related to the operation of a Christmas tree farm or nursery that do not involve new road construction.
- (4) "Operator" means a person responsible for conducting forest practices. An operator may be the owner or a person who, through contractual agreement with the owner, is obligated to or entitled to conduct forest practices or carry out a timber sale.
- (5) "Owner" means an individual, firm, partnership, corporation, or association of any nature that holds an ownership interest in forest land or timber.
- (6) "Person" means an individual, firm, partnership, company, commercial entity, corporation, or association.
- (7) "Stream" means a natural watercourse of perceptible extent that has a generally sandy or rocky bottom or definite banks and that confines and conducts continuously or intermittently flowing water.
- (8) "Streamside management zone" or "zone" means a stream, lake, or other body of water and an adjacent area of varying width where management practices that might affect wildlife habitat or water quality, fish, or other aquatic resources need to be modified. The streamside management zone encompasses a strip at least 50 feet wide on each side of a stream, lake, or other body of water, measured from the ordinary high-water mark, and extends beyond the high-water mark to include wetlands and areas that provide additional protection in zones with steep slopes or erosive soils.
- (9) "Timber sale" means a series of forest practices designed to access, harvest, or regenerate trees on a defined land area for commercial purposes.

History: En. Sec. 2, Ch. 608, L. 1991; amd. Sec. 1, Ch. 320, L. 1993; amd. Sec. 325, Ch. 418, L. 1995.

77-5-303. Standards for forest practices in streamside management zones. (1) The following practices are prohibited in a streamside management zone:

- (a) broadcast burning;
- (b) the operation of wheeled or tracked vehicles except on established roads;
- (c) the forest practice of clearcutting;
- (d) the construction of roads except when necessary to cross a stream or wetland;

(e) the handling, storage, application, or disposal of hazardous or toxic materials in a manner that pollutes streams, lakes, or wetlands or that may cause damage or injury to humans, land, animals, or plants;

(f) the side-casting of road material into a stream, wetland, or watercourse; and

(g) the deposit of slash in streams or other water bodies.

(2) The department shall publish and distribute the rules implementing the streamside management standards.

History: En. Sec. 3, Ch. 608, L. 1991.

77-5-304. Inspection -- onsite consultation. (1) The department may inspect forest practices on any federal, state, or private land in this state to assess compliance with the provisions of this part and rules adopted pursuant to this part.

(2) The department may conduct an onsite consultation with an owner or operator to review harvest plans and watershed conditions. During the onsite consultation, the department may review and, if appropriate, approve the proposed use of alternative streamside management practices, as provided in 77-5-303.

History: En. Sec. 4, Ch. 608, L. 1991.

77-5-305. Responsibility for compliance -- penalties -- administrative orders.

(1) (a) Except as provided in subsection (1)(b), it is the responsibility of the owner to ensure compliance with the provisions of this part and rules adopted pursuant to this part.

(b) If a written contract between an owner and an operator specifies that the operator is responsible for compliance with laws relating to forest practices, the operator is considered the responsible party for all enforcement actions taken by the department under this section.

(2) A person who violates a provision of this part, a rule adopted pursuant to this part, or an order issued under this section shall be subject to a civil penalty not to exceed \$1,000. Each day of violation constitutes a separate violation.

(3) (a) When the department determines that an owner or operator has violated a provision of this part or a rule adopted pursuant to this part and has caused damage to watershed or wildlife resources, the department may serve an order requiring the person responsible for the conduct of forest practices to undertake necessary site rehabilitation within a reasonable period of time stated in the order. The order must specify the nature of the violation and the damage or unsatisfactory condition resulting from the violation.

(b) The order becomes final unless, within 30 days after the notice is served, the person named requests in writing a hearing before the department. On receipt of the request, the department shall schedule a hearing. Service by mail is complete on the date of mailing.

(c) If, after a hearing, the department finds that a violation has occurred and the watershed or wildlife habitat damage warrants site rehabilitation, it shall affirm or modify the order previously issued. If the department finds that a violation has not occurred or that site rehabilitation is not warranted, it shall rescind the order.

(d) The department may include in an order a provision that the owner or operator immediately cease causing further damage and take immediate action to alleviate the damage or to prevent future damage. The department may institute an action for injunctive relief under Title 27, chapter 19, if the recipient of the order does not comply with it.

(4) Subsection (3) does not prevent the department from seeking voluntary compliance and site rehabilitation through warning, conference, or any other appropriate means.

(5) All fines and penalties levied under this section must be deposited in the state general fund.

History: En. Sec. 5, Ch. 608, L. 1991; amd. Sec. 60, Ch. 422, L. 1997.

77-5-306. Repealed. Sec. 66, Ch. 422, L. 1997.

History: En. Sec. 6, Ch. 608, L. 1991.

77-5-307. Rulemaking. The department shall adopt rules:

- (1) implementing each of the management standards provided in 77-5-303;
- (2) providing specific direction necessary for owners and operators to understand and comply with the management standards, including additional definition of the streamside management zone and the forest practices permissible within the zone;
- (3) providing alternative practices for the standards provided for in 77-5-303; and
- (4) regulating the harvest of timber in streamside management zones.

History: En. Sec. 7, Ch. 608, L. 1991.